

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

Case Number: 06-20076

v.

HON. DENISE PAGE HOOD

ROBERT F. SHARPE,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR RELEASE FROM INCARCERATION

I. BACKGROUND

On September 9, 2010, a Motion for Release From Incarceration was filed in the above-styled case. The motion stated Defendant has been experiencing serious health problems, and seeks early release to obtain medical treatment. While this Court is sympathetic to Defendant's condition, this Court does not have the authority to release Defendant from incarceration. Therefore, Defendant's motion must be denied.

II. ANALYSIS

18 U.S.C. § 3582(c) provides that the court may not modify a term of imprisonment once it has been imposed. The exceptions to this provision are limited to the following circumstances: 1) upon motion of the Director of the Bureau of Prisons, 2) as prescribed under Rule 35 of the Federal Rules of Criminal Procedure, and 3) if the defendant was sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission. *See* 18 U.S.C. § 3582(c).

In this case, the Director of the Bureau of Prisons has not filed a motion, and there is no

indication that Defendant has submitted a request for such a motion to the Bureau of Prisons. The Federal Rules of Criminal Procedure only allow correction of sentences under Fed. R. Crim. P. 35. Rule 35(a) provides that the district court can correct a sentence upon remand after an appeal. Rule 35(b) allows reduction of sentences for substantial assistance on the Government's motion. Rule 35(c) allows correction of a sentence if the Court acts within 7 days of the imposition of a sentence and if the Court has made an arithmetical, technical or clear error. At this juncture, the Court does not have jurisdiction to reduce the sentence under Rule 35 since the matter has not been remanded from the Sixth Circuit, the Government has not filed a motion to reduce the sentence for substantial assistance, and the motion was filed beyond the seven (7) days of the imposition of the sentence. Finally, there is no indication that the Sentencing Commission has lowered the relevant sentencing range. Defendant has not demonstrated that the Court has the authority to reduce Defendant's sentence.

III. CONCLUSION

For the reasons set forth above,

IT IS ORDERED that Defendant's Motion for Release from Incarceration [Docket No. 68, filed on September 9, 2010] is **DENIED**.

s/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: May 20, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 20, 2011, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager